

## MEMORANDUM

DATE: November 5, 2004

TO: Land Reclamation Commission

FROM: William S. Zeaman, Environmental *Specialist*  
(original signed by William S. Zeaman)

SUBJECT: Hearing Request Concerning the Permit Transfer Application sought after by  
Capital Quarries Company, Inc. in Gasconade County – for a Total of 50-Acres.

### BACKGROUND:

On August 30, 2004, the Missouri Department of Natural Resources Land Reclamation Program received a permit transfer application from Capital Quarries Company, Inc. that proposes to increase their mining operation for an additional 50-acres in Gasconade County. After the application was deemed complete the company published the public notice once a week, beginning on September 8, 2004, for four consecutive weeks in *The Advertiser-Courier* a newspaper that is qualified to publish Public Notice's pursuant to Section 493.050 RSMo., in Gasconade County. The company also sent by certified mail a notice of intent to operate a surface mine to the appropriate planning officials and adjacent landowners. The application proposes to accept transfer of the Staggenborg Materials quarry. This proposed transfer of a 50-acre limestone mining operation is located in, Section 35, Township 46 North, Range 05 West in Gasconade County. The proposed mine operation timeframe is to the year 2023.

During the public comment period following the initial publication of the public notice, the Staff Director received three (3) letters concerning the proposed Capital Quarries permit transfer application for the Hermann (Staggenborg) Quarry mine site. The three letters request that a public meeting be held to further discuss the permit transfer application. We did contact Capital Quarries by letter to see if they would entertain a public meeting in accordance with 444.773.3 RSMo. Capital Quarries responded that it is company policy to initiate contact with individuals who express concerns with their mining operation as soon as it is brought to their attention. Capital Quarries feels that a one-on-one approach is the clearest most efficient means of communication. Consequently, Capital Quarries formally and respectfully waives the right to convene a Public Meeting in accordance with 444.773.3 RSMo., and therefore we present a request for a hearing before the Commission.

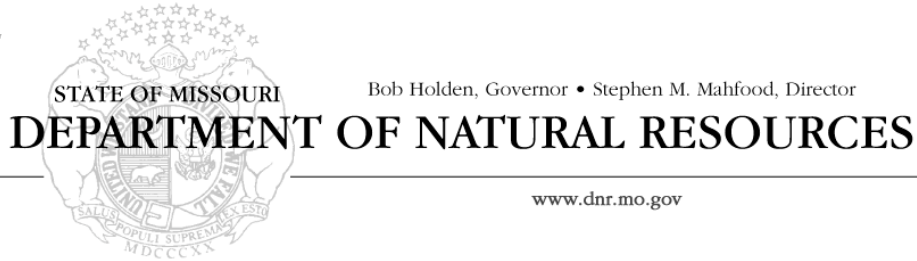
The Land Reclamation Act addresses the issues of mining and the environment, public notification requirements, request for permit application material and a request for a public meeting / hearing. The Department does not provide protection concerning blasting related issues or noise pollution.

On October 26, 2004, the Staff Director did inform the people requesting a meeting of the time, location of and how to prepare for the November 17, 2004, commission meeting.

I will note that on November 4, 2004 the Staff Director received a telephone call from Virginia Kell who will not be able to attend the November 17<sup>th</sup> Land Reclamation Commission Meeting. However Virginia did state to the Staff Director that Capital Quarries did detonate explosives at the mine site on November 4<sup>th</sup>. Virginia Kell further suggested that if Capital Quarries were to detonate explosives like they did on November 4<sup>th</sup> 2004, then there would be no problems. Essentially Virginia did feel some vibrations but the detonation did not cause any further troubles.

#### **Staff Director's Notice of Recommendation**

The Land Reclamation Act at Section 444.773.3, RSMo, requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the "Act" at 444.773.1, RSMo, requires the Director to consider any written comments when making the notice of recommendation. After consideration of comments provided in letters, it is the Director's recommendation to issue the permit transfer application involving 50-acres in Gasconade County sought after by Capital Quarries Company, Inc. The Staff Director did recommend approval of the pending mining permit transfer application, because in fact the company has satisfied all the requirements of The Land Reclamation Act.



## MEMORANDUM

**DATE:** November 5, 2004

**TO:** LAND RECLAMATION COMMISSION

**FROM:** Larry P. Coen, R.G., Staff Director (*original signed by Larry P. Coen*)

**SUBJECT:** Director's Recommendation – Capital Quarries Company, Inc.,  
Permit Transfer Application, 50-acres Total; Gasconade County.

The following constitutes the Director's Recommendation, based on a review of the comments received and the required components of the recommendation.

### Staff Director's Notice of Recommendation

The Land Reclamation Act at Section 444.773.3, RSMo, requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the "Act" at 444.773.1, RSMo, requires the Director to consider any written comments when making the notice of recommendation. After consideration of issues provided in letters, it is my recommendation to issue the permit transfer application involving 50-acres in Gasconade County sought after by Capital Quarries Company, Inc. My recommendation of approval of this permit transfer application is based on my conclusion that the health, safety or livelihood will not be unduly impaired by the issuance of this permit application. The balancing test stated in the declaration policy of the Act at Section 444.762, RSMo, does not weigh against the surface mining of minerals in this instance; therefore the decision is to approve this site.

### Required Components of the Recommendation

The Land Reclamation Act requires that the director make a formal recommendation regarding the issuance or denial of an applicant's permit. Rules at 10CSR 40-10.040(1)(A) require that the Director's recommendation be based on several specific items as follows:

1. The application's compliance with section 444.772, RSMo;
2. The application's compliance with 10 CSR 40-10.020;
3. Consideration of any written comments received;
4. Whether the operator has had a permit revoked or a bond forfeited; and
5. If a petition is filed and a hearing is held, the commission shall make the decision.

**Items 1 and 2:** These are basically the same issue stating that the application must meet the criteria for application completeness in both the statute and the rules. After staff review of the permit transfer application from Capital Quarries Company, Inc., the staff determines that the application document has met the standards of both the statutes and the rules.

**Item 3:** For the consideration of all written comments please refer to Attachment 1.

**Item 4:** The company has never had a permit revoked or a bond forfeited, in accordance with the full language of the rules at 10CSR 40-10.040(1)(A).

**Item 5:** There is record on file that Virginia Kell, Robert E. Henson, D.O., and Duane & Glenda Kraettli request that a public meeting be held to further discuss the permit transfer request. We did contact Capital Quarries by letter to see if they would entertain a public meeting in accordance with 444.773.3 RSMo. Capital Quarries responded that it is company policy to initiate contact with individuals who express concerns with their mining operation as soon as it is brought to their attention. Capital Quarries feels that a one-on-one approach is the clearest most efficient means of communication. Consequently, Capital Quarries formally and respectfully waives the right to convene a Public Meeting in accordance with 444.773.3 RSMo., and therefore we present a request for a hearing before the Commission.

### **Summary Comments**

As the commissioners will understand in the following pages, there are a variety of concerns surrounding this proposed transfer application. The Land Reclamation Act addresses the issues of mining and the environment, public notification requirements, request for permit application material and a request for a public meeting / hearing. The Department does not provide protection concerning blasting related issues or noise pollution.

All of the issues did receive a response to the written concern and all comments are taken into consideration. As Staff Director I have recommended approval of the pending mining permit transfer application, because in fact the company has satisfied all the requirements of The Land Reclamation Act.

Attachment

## **Attachment 1**

### **Response to Public Comments Regarding the Proposed Permit Transfer Application From Staggenborg Materials to Capital Quarries Company, Inc., Gasconade County**

The Staff Director received three letters concerning the proposed permit transfer application from Staggenborg Materials to Capital Quarries Company, Inc. The letters raised issues that are categorized in this attachment. The issues have been grouped together for ease of written presentation. Listed below are the issues raised and responses of consideration.

#### **Blasting Related Issues**

**Comment:** The dynamite charges at the current site rattles our windows and you can feel it on the floor of our home. When charges were set off on the North side of our property to build a road several years ago, (Mr. Staggenborg was supervising that operation). We were told that it would not affect our home whatsoever, but the day of the blast he stopped by the house and asked that we remove all of the crystal off the shelves and take pictures from the wall-as a precaution. What happened was that our well pump fell off and into the well having to be retrieved. Our home has not settled, is on piers and solid bedrock.

**Comment:** My Residence is within close proximity to the Staggenborg Quarry. My home is close enough to receive the intense shaking every time that an explosive device is used at the quarry. The extent of the explosions can only be calculated by the shaking that occurs; enough of a shake to have the fire detectors fall from my ceilings. I would also like to encourage you to make a site visit to the area and see for yourself just how the impact of this operation affects both homeowners and the medical and the convalescent facility that suffer from the explosions. It would seem that the power company owning those lines would be concerned about any increase in production from that quarry. I must also express concern for the citizens of the nursing home, which borders the quarry. My father is a resident there and once thought the explosion was an earthquake. With the same amount of concern, I must report that the Hermann Area District Hospital is just across the street from the nursing home.

**Response:** Detonation of explosives always triggers ground vibrations at specific frequencies that do leave the blast area and resonates structures nearby. When a blast is detonated, some of the energy travels through the ground as vibration. The ground vibration travels mainly on the surface at varying speeds depending upon the density and thickness of the geology. Although perceptible by the structure and people, the energy level decreases rapidly with distance. Many

scientific studies have investigated the potential of blast vibrations to damage of residential-type structures. Blast vibrations can be perceptible in a home at great distances from a blast. Structures respond to very low frequency levels of ground vibration. In general, most of the responses by a structure, due to blasting, do not produce damage; rather the structure resonates due to the mechanical frequency of the blast being equal or very close to the natural undamped frequency of the structure. However, it is well documented that specific ground vibrations at specific frequencies can cause damage to a structure, such as a house. I do believe that a detonation of explosives could dislodge a well pump.

We did contact Capital Quarries concerning blasting practices. During our conversation we learned that Capital contracts Dyno Nobel to conduct the detonation of explosives. Essentially, Capital drills the boreholes and when the borehole drilling is complete they contact Dyno Nobel to load and detonate the explosives. There is no storage of explosives on site. Explosives are shipped in on the day of detonation. There is a seismograph that is placed during the detonation that records the air blast and ground level vibrations. Capital Quarries is also aware of the power lines. At this time we are not aware of any precautionary measures Capital plans on taking to secure the integrity of the power lines. We encourage Capital Quarries to use the best blasting related management practices when detonating explosives near the power lines.

It may prove beneficial for concerned individuals to have a blasting survey taken of their house and property. A blasting survey is usually done before the initiation of a blasting program, however a survey can be performed at any time. The blasting survey usually involves an independent party documenting all of the walls and other parts of the house for cracks or the lack of cracks. If a large blast does put a crack in a wall where there once was none or if an existing crack becomes larger the survey will provide such documentation.

Another option to consider is having an independent blasting consultant set up a seismograph to monitor the vibrations a residence experiences. Detonation of explosives always triggers ground vibrations at specific frequencies. If the seismograph measures damaging ground movement at a damaging frequency, during the detonation of explosives, then there is better evidence that the damage caused to a residence is, in fact related to blasting. A review of past blasting records or logs will also provide insights to the amount of explosives detonated.

No one has the right to cause damage to anyone's property. If a concerned person experiences damage to their property due to the practices of the neighboring quarry then they have every right to take civil litigation actions to formally resolve those issues.

Although civil litigation is an option, we recommend that concerned individuals request the company to provide assistance with the blasting survey, seismograph monitoring or any damage claim, although we must emphasize that this would be strictly voluntary for the company. There are no environmental laws that would require the company to do so. However, any concerned person has every right to ask the mining company to resolve these issues and pay the costs to do so. Our contact person with Capital Quarries Company, Inc., is Mr. Tommy Crouch who can be reached by telephone at (573) 634-4800 or you can contact him in writing at 822 W. Stadium Blvd., Jefferson City, Missouri, 65109. We can and do suggest that Capital Quarries Company, Inc. should encourage their contract blaster to take all necessary precautions when detonating

explosives to lessen some of the neighbors concerns. Otherwise, the Department does not regulate blasting related activities at limestone quarries and we have no jurisdictional authority to do so.

Another option is to contact the Missouri Limestone Producers Association (MLPA) and we did alert MLPA about the concerns surrounding this quarry. MLPA is a trade association that exists in part to help mediate problems that can occur among communities or residents and limestone mining operations. A phone number for MLPA is (573) 635-0208 and we recommend that a concerned person speak with Mr. Steve Rudloff.

We do believe that people who live near this quarry operation will experience vibrations from the detonations of explosives. We have no ability at this time to provide aid or relief for anyone concerning the detonation of explosives based on the current wording of The Land Reclamation Act. It is our hope that a positive resolution will take place between concerned individuals and Capital Quarries Company, Inc., in order to address blasting related issues.

## **Mining and the Environment**

**Comment:** When I first purchased the property, it was with the intent of possibly building on the site adjacent to the proposed quarry. It is a beautiful site there and a road easement was established. My kids have hiked, camped and enjoyed the woodland, and now my grandchildren are to enjoy the same experience. That would not be a good idea if it ends up adjacent to a hole in the ground. It would not be safe. There is an abundance of wildlife making their homes in the area, turkey, deer, red fox, raccoons, possum, rabbits, squirrel, ground hogs, and not to be forgotten birds out the wazoo.

**Response:** Strip mining is a temporary harsh activity on the land affected by mining. We understand that strip mining does appear like environmental destruction. The strip mining process involves the clearing and grubbing of vegetation, removal of overlying material to access the mineral commodity and blasting to fracture the rock mass. Due to the lack of environmental concern by some mine operators prior to 1970, there are now various safeguard requirements to protect the surrounding environment from a mining operation. Some of the safeguard requirements include keeping sediment from reaching a stream outside the mine area, keeping dust and other pollution from affecting areas outside the mined property and timely reclamation of land affected by mining. Laws enforced by the Missouri Department of Natural Resources require these environmental protection safeguards. The Land Reclamation Act requires that the affected land be reclaimed to a land use of either wildlife, agriculture, development or a water impoundment. The mine-plan for this site involves the reclamation of fifty-acres for a development land use. The land use of development is often achieved by leaving a hard rock floor that does not allow water to pool and does not require topsoil replacement or establishment of vegetation for the majority of the mined out area. Wherever topsoil is replaced, vegetation will be established sufficient enough to control erosion. The plans are to leave three vertical highwalls after mining is complete. There are concerns about vertical walls of great height consisting of solid rock present at some mining operations. Undoubtedly, if someone were to fall off one of these highwalls there would be grave consequences. The Code

of State Regulations at 10 CSR 40-10.050(5)(B)8., specifically exempts an operator from reducing a highwall if there is an inadequate amount of material for backfill. At some mining operations, the company will leave a stair-step effect of benches, rather than leaving a straight vertical wall, for safety reasons.

Restoring mined land to a viable land use is what Land Reclamation Act is all about. The Act's declaration is to strike a balance between surface mining of minerals and reclamation of land subjected to surface disturbance by mining, as contemporaneous as possible, and for the conservation of land, and thereby to preserve, and aid in the protection of wildlife and aquatic resources, to establish recreational, home and industrial sites, and to protect and promote the health, safety and general welfare of the people of this state. I have no doubt that the Act and reclamation plan proposed by Capital Quarries Company, Inc., provides locomotion to return the mine site to a land use recognized by The Land Reclamation Act.

A certificate to mine limestone issued by the Missouri Land Reclamation Commission does not allow an operator to destroy the environment. Although the Act does not specifically provide guidance for some of the raised concerns, we have confidence that Capital Quarries Company, Inc., will not be able to legally destroy the environment outside of the permit area without consequences.

### **Noise Pollution Concerns**

**Comment:** The quiet seclusion of our hillside home comes to an end as the quarry starts its operation and I close the windows so as to avoid all the noise.

**Comment:** Nearby physician's offices, hospitals and nursing homes may even be affected by the quarry. Certainly the peace and tranquility will be affected if not the structures too.

**Response:** We believe that a variety of noises and noise levels are generated when Capital operates the quarry. If noise levels generated from the operated quarry become problematic then voice that concern to Capital Quarries. Again, our contact person with Capital Quarries is Mr. Tommy Crouch who can be reached by telephone at (573) 634-4800 or you can contact him in writing at 822 W. Stadium Blvd., Jefferson City, Missouri 65109. There is no environmental provision that allows the Missouri Department of Natural Resources to administer protection against noise pollution.

We also contacted the Gasconade Sheriffs office. We learned that the Sheriffs office does enforce the peace disturbance law, which is for unreasonable excessive noises. During our contact we learned that the noise generated from a quarry would not be considered as unreasonable noises because loud noises are associated with a quarry operation. There is no criminal aspect of the peace disturbance law because of the nature of the rock quarry and normal noise affiliated with such a commercial operation. If the noise levels become unbearable, there might be cause to file a civil action lawsuit to help relieve the noise levels the quarry produces. Other besides contacting the company and requesting some relief from the noise or filing a civil



action law suit to help alleviate the noise levels we are not aware of any relief that the surrounding community can access for help.

However, if noise levels do become problematic at your residence or at nearby office areas, noise levels would probably be excessive in the quarry area. We will suggest some other options that may aid you in resolving blasting or noise-related complaints. Again, we encourage anyone to speak directly to the company about your concerns and the effects that noise pollution is having on your well being. Another option is to contact the Mine Safety and Health Administration (MSHA) at their field office in Rolla by telephone at 573.364.8282. Although MSHA only regulates a miner's-safety and well being, most likely if you are experiencing problems with noise pollution from a mine site, possibly the miners are too. Similar to blasting, another option is to contact the Missouri Limestone Producers Association (MLPA). This organization is a trade association that exists in part to help mediate problems that can occur among communities or residents and limestone mining operations. MLPA is not a regulatory agency; however, it does exist, in part, to mediate and resolve problems that can and do occur between limestone mining operations and their neighbors. The telephone number for MLPA is 573. 635.0208 and it would be best to speak with Mr. Steve Rudloff. We also sent to Mr. Rudloff, via facsimile, a copy of the letters.

### **Public Notification Requirements**

**Comment:** I did not realize that when Mr. Staggenborg began the quarry that it would be so extensive or even border my land. I received no prior announcement of establishing the quarry what so ever.

**Response:** Surprisingly, Mr. Staggenborg did not inform the Missouri Department of Natural Resources, Land Reclamation Commission about operating the "Upper Quarry" prior to conducting mining operations, either. On July 2, 1996, two inspectors investigated a complaint that Mr. Staggenborg was allowing sediment to go onto adjacent property at a place other than the old mine site (Lower Quarry). The two inspectors discovered that Staggenborg was in fact conducting commercial mining operations a site that was not permitted by the department's Land Reclamation Program for approximately one year prior to the July 2, 1996, inspection. The two inspectors identified that approximately five (5) acres of land were disturbed by surface mining at the Upper Quarry on July 2, 1996. Operating without a permit, is a violation of Section 444.770.1, RSMo 1994, and 10 CSR 40-10.010(1). On July 11, 1996, the department's Land Reclamation Program issued a violation to Staggenborg Quarries, requiring remedial actions including submitting a permit application and constructing a sediment pond to catch water runoff.

The 1994 version of The Land Reclamation Act was the law in effect at that time. Under the 1994 version of The Land Reclamation Act the public notification requirements were not as stringent as compared to the 2001 edition of The Land Reclamation Act. The 1994 version of the Act required an operator to publish a notice of intent to operate a surface mine, one time in a newspaper with a general circulation in the county where the land was located. On July 31, 1996, Staggenborg Materials did in fact publish a notice of intent to operate a surface mine in

The Advertiser Courier, a newspaper of general circulation in Gasconade County. The one time running of the newspaper advertisement did satisfy public notification requirements under the 1994 version of the Act. There was no requirement under the 1994 version of the Act to send certified mail to adjoining property owners. On October 23, 1996, The department's Land Reclamation Program did issue Permit 0720 to Staggenborg Materials for the Upper Quarry.

The reason adjoining landowners received certified mail concerning the permit transfer to Capital Quarries is due to the 2001 edition of the Act which has more stringent public notification requirements. The Act now requires publishing a notice of intent to operate a surface mine, once a week for four consecutive weeks and to also send certified mail to adjoining landowners and also the governing body of the county or cities where a surface mine is proposed. The reason for passage of the 2001 edition of the Act was to allow the public to have better awareness of a proposed mining operation.

### **Request for Permit Application Material**

All three people who wrote in concerning the permit transfer application requested a copy of the permit application material. The information was sent out as requested.

### **Request for a Public Meeting / Hearing**

All of the letters request that a public meeting be held. We did contact Capital Quarries by letter to see if they would entertain a public meeting. Capital Quarries responded that it is company policy to initiate contact with individuals who express concerns with their mining operation as soon as it is brought to their attention. Capital Quarries feels that a one-on-one approach is the clearest most efficient means of communication. Capital Quarries did hold a neighborhood informational meeting on Friday October 22, 2004, at approximately 1:00PM. Consequently, Capital Quarries formally and respectfully waives the right to convene a Public Meeting as identified in The Land Reclamation Act and therefore we present a request for a hearing before the Commission.

The decision as to whether or not a formal hearing will be granted rests solely with the Land Reclamation Commission that will be considered at the scheduled November 17, 2004, meeting. The hearing will not be held on November 17, 2004. If the Commission grants the request for a hearing, the actual hearing will be scheduled at a later date. The people who were denied a public meeting as identified by The Land Reclamation Act have been informed how to proceed before the Land Reclamation Commission and demonstrate that a basis for that request to be granted exists. This is known as "standing".

It should be understood that if a hearing is granted, the burden of proof shall be on the applicant for the permit. If the Commission finds based on competent and substantial scientific evidence on the record of the hearing, that an interested party's health, safety or livelihood will be unduly impaired by the issuance of that permit, the Commission may deny such permit.